

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TIMOTHY A. WHITMORE,

Plaintiff,

V.

PIERCE COUNTY DEPARTMENT OF  
COMMUNITY CORRECTIONS *et al.*,

## Defendants.

Case No. C05-5265RBL

## SECOND ORDER TO AMEND

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). The plaintiff has paid the filing fee and is not proceeding *in forma pauperis*. The original complaint in this action was over 70 pages long and did not comply with Fed. R. Civ. P. 8 (a). A complaint should contain a short plain statement showing the courts jurisdiction, a short plain statement of the claim showing the pleader is entitled to relief, and a statement of the relief sought in the action. The complaint was not accepted by the court and plaintiff was ordered to file an amended complaint that would act as a complete substitute.

In response plaintiff filed a 5 page form civil rights complaint which he altered so it indicated it was both a civil rights complaint and a habeas corpus petition. He also filed a 40 page amended complaint. (Dkt. # 25 and 26). A person must be in custody to file a habeas corpus action. Plaintiff does not appear to be in custody, although he may meet the in custody requirement if he is still under

1 a current restraint such as community supervision. In either event he may not file a habeas petition in  
2 the same action as a civil rights action. If plaintiff wishes to file a habeas petition he will have to do  
3 that in a separate action.

4 Review of the proposed amended complaint reveals that plaintiff alleges he is a disabled  
5 veteran and suffers from mental illness. He alleges his illness make it difficult for him to stay on  
6 track. His allegations, if true, explain the short comings of the complaint and his failure to comply  
7 with the court's first order. Plaintiff seeks to challenge the hearing that led to revocation of his  
8 parole or community custody status. He also wishes to challenge medical and mental health  
9 treatment at the jail, mail policies and procedures. In addition he appears to challenge access to  
10 courts.

11 His proposed amended complaint contains examples of things that allegedly happened to  
12 other inmates, habeas corpus matters that cannot be maintained in this action, side notes and  
13 considerable unneeded wanderings including a five page chart. (Dkt. # 26 pages 16 to 26 and 35 to  
14 40). However, the outline format and detail provided by plaintiff evidence high intellect and the  
15 ability to submit a proper complaint.

16 The court will not recommend dismissal of this action at this point in time. Plaintiff must  
17 submit a complaint that complies with Fed. R. Civ. P. 8 for this action to proceed. The Court directs  
18 plaintiff to fill out the form provided for the filing of a civil rights action by an inmate. Do not add  
19 information or facts relating to other inmates.

20 The clerk is directed to provide another blank form to plaintiff. The clerk is further directed  
21 to note the due date of **July 29th, 2005** on the court's calendar. Failure to file an acceptable  
22 complaint on or before that date will result in a Report and Recommendation that this action be  
23 dismissed without prejudice for failure to prosecute.

24 DATED this 27<sup>th</sup> day of June, 2005.  
25

26 /S/ J. Kelley Arnold  
27 J. Kelley Arnold  
28 United States Magistrate Judge

ORDER - 2